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Brussels, 18 December 2009  
GB/XK/kl D(2009)1809 C2009-0720

**Subject: Prior-checking notification, case 2009-0720**

Dear Ms MARIGO,

We reviewed the documents you have provided the EDPS concerning the notification for prior-checking under Article 27(2) of Regulation 45/2001 on the recruitment of seconded national experts in the EEA. The processing operation under examination is subject to prior-checking in conformity with Article 27(2)(b) of Regulation 45/2001, since it involves an evaluation of the applicants' ability to perform the functions of a seconded national expert for which the selection and recruitment procedure has been organised. The processing operation in the present case might also involve data related to health (collection of medical certificate or disability data) and to criminal offences (collection of police record), which would constitute an additional ground for prior-checking in the light of Article 27(2)(a) of the Regulation.

The procedure related to the recruitment of national experts, as well as the data protection practices as presented in the notification, reveal some similarities to other processing operations regarding national experts' recruitment by E.U institutions/bodies/agencies. To this regard, we recommend that you read thoroughly the EDPS Guidelines on staff recruitment<sup>1</sup> as well as the EDPS Joint Opinion on "*Staff recruitment procedures carried out by some Community agencies*"<sup>2</sup>. Both documents concern, *inter alia*, the category of national experts

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<sup>1</sup> The EDPS Guidelines can be found on the EDPS website under the title "Thematic Guidelines".

<sup>2</sup> EDPS Opinion issued on 7 May 2009 (case 2009-0287).

and they examine all data protection principles in the light of the provisions of Regulation 45/2001. It follows that the principles laid down in both the EDPS Guidelines and the EDPS Joint Opinion on staff recruitment are applicable in the case of national experts' recruitment carried out by the EEA.

The EDPS shall first underline the EEA's practices which do not seem to be in conformity with the principles of Regulation 45/2001 and with the EDPS Guidelines and shall then provide the EEA with relevant recommendations.

### **1. Processing of special categories of data**

**Facts:** The notification does not mention whether a medical certificate or a police record is required for the recruitment of a national expert. In addition, no other sensitive data as prescribed in Article 10 (1) of Regulation 45/2001 are mentioned. It is however indicated that the age and the gender of a candidate could be included in the CV or in the motivation letter.

#### **Recommendations:**

*i)* The EDPS would like to be informed whether the EEA processes any sensitive data under Article 10 (1) of Regulation 45/2001 and how those data comply with the conditions of Article 10 of the Regulation.

*ii)* In case a medical certificate or a police record are processed for the recruitment purposes, the EDPS would like to highlight the specific recommendations made in his Guidelines and his Joint Opinion regarding the data retention period of such data.

*iii)* As concerns the possible processing of data related to age and gender, the EDPS recommends that the "data protection note" should indicate that "*in case age and gender are processed, they are exclusively used to guarantee equal opportunities*".

### **2 Right of access**

**Facts:** The notification states that candidates can contact the Human Resources Management Board (HRM Group) of EEA and submit their request to access their data.

**Recommendation:** The EDPS would like to highlight that a candidate for a national expert's position should be given access to his/her own evaluation results regarding all stages of the selection procedure with the following exception: access must not be granted to either the comparative results of other applicants or to the individual opinions of the members of the Evaluation Committee of EEA

### **3. Information to be given to the data subject**

**Facts:** It is indicated that the HRM Group will post a "data protection note" on the "job opportunities" page of the EEA website. The EDPS has not been provided with a copy of such note.

#### **Recommendations:**

***Time of posting the data protection note:*** The EDPS would like to stress that it is important to post a data protection note on the EEA's website before the selection procedure begins, so

that all candidates can be informed of all their rights and of all the necessary information concerning the processing of their data. This note should remain available to the website for all future recruitment procedures.

***Content of the information note:*** As to the content of the data protection note, the EDPS would highlight that all elements listed in both Articles 11 and 12 of Regulation 45/2001 should be clearly and thoroughly indicated in the note.

A copy of the data protection note should be sent to the EDPS.

The EDPS recommends that you should adopt specific and concrete measures to implement these recommendations regarding the recruitment of national experts within the EEA. To facilitate our follow-up, it would therefore be appreciated if you could provide the EDPS with all relevant documents within 3 months of the date of this letter which prove that the recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

Cc: Gordon McInnes, Data Protection Officer of EEA